

WER.6526

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SEPTEMBER LEE FULLER

Plaintiff,

v.

**WERNER ENTERPRISES, INC.
AND GREGORY GEORGE HITTNER**

Defendants.

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CIVIL ACTION NO. _____

JURY DEMAND

**DEFENDANT WERNER ENTERPRISES, INC. AND GREGORY GEORGE HITTNER'S
NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **WERNER ENTERPRISES, INC.** and **GREGORY GEORGE HITTNER**, Defendants in the above matter (hereinafter, "Werner Defendants"), and file this Notice of Removal of the above-captioned case. Removal is based on 28 U.S.C. § 1332 (diversity jurisdiction) and is authorized by 28 U.S.C. §§ 1441 and 1446.

**I.
BACKGROUND**

1. September Lee Fuller (hereinafter "Fuller") intervened in a suit filed by Plaintiff Mark R. Stubbs naming Octavio Mota Fernandez and Bryan's Express, Inc. as Defendants in the 191st Judicial District Court of Dallas County, Texas, Cause No. DC-16-04618. Plaintiff's First Amended Petition and Request for Disclosure named Werner Enterprise, Inc. as an additional defendant. Fuller intervened in the matter naming Gregory George Hittner as a Defendant and sued alleging the negligence of Defendants Gregory George Hittner and Werner Enterprise, Inc.

2. Defendant Werner Enterprise, Inc. was served with Plaintiff's First Amended Petition and Request for Disclosure on May 11, 2016.

3. Defendant Werner Enterprise, Inc. was served with the Original Plea in Intervention of September Lee Fuller on July 21, 2016.

4. Defendant Gregory George Hittner was served with the Original Plea in Intervention of September Lee Fuller on July 29, 2016.

5. On September 29, 2016 Plaintiff Mark R. Fuller filed his Motion for Nonsuit with Prejudice as to all Defendants.

6. On September 29, 2016 an Order Granting Plaintiff Mark R. Stubbs Motion for Nonsuit as to all Defendants was granted, leaving the remaining parties of Intervenor September Lee Fuller and Defendants Werner Enterprise, Inc. and Gregory George Hittner.

7. The Order Granting Plaintiff Mark R. Stubbs Motion for Nonsuit as to all Defendants was granted on September 29, 2016 creating complete diversity amongst the remaining parties. Defendant has filed this Notice of Removal within the time period required. 28 U.S.C. §1446(b).

8. Intervenor September Lee Fuller is a resident of Texas.

9. Defendant Werner Enterprise, Inc. is incorporated in Nebraska, with its corporate office and principal place of business in Omaha, Nebraska.

10. Defendant Gregory George Hittner is a resident of Tennessee.

11. The Original Plea in Intervention of September Lee Fuller, filed contemporaneously herewith, seeks "damages pursuant to Rule 47(c)(4)." Texas Rule of Civil Procedure 47(c)(4) addresses "monetary relief over \$200,000, but not more than \$1,000,000."

II.
BASIS FOR REMOVAL

12. Removal is proper under 28 U.S.C. § 1332(a) because Intervenor's suit is a civil action in which this Court has original jurisdiction over the parties, based upon diversity jurisdiction under 28 U.S.C. § 1332. This action is removable to this Court pursuant to the provisions of 28 U.S.C. § 1441(b) because Intervenor is a citizen of the State of Texas, Defendant Gregory George Hittner is a resident of Tennessee, and Defendant Werner Enterprise, Inc. is an entity with its principal place of business being in Omaha, Nebraska.

A. Complete Diversity Exists.

13. As the Court is certainly aware, for diversity purposes, a person is considered a citizen of the state where that person is domiciled. Intervenor is a person living in and domiciled in Texas. Defendant Gregory George Hittner is a person living in and domiciled in Tennessee. If the person is a corporation, it is a citizen of the state where it has its principal place of business. Defendant Werner Enterprise, Inc. operates its principal place of business in the state of Nebraska.

14. 28 U.S.C. § 1446(b)(3) states that, "except as provided in subsection (c), if the case stated by the initial pleading is not removable, **a notice of removal may be filed within 30 days after receipt by the defendant**, through service or otherwise, of a copy of an amended pleading, motion, order or **other paper from which it may first be ascertained that the case is one which is or has become removable.**"¹

15. The Werner Defendants are now, and were at the time the removed action was commenced, diverse in citizenship from the Intervenor. 28 U.S.C. § 1332. Upon entry of the

¹ 28 U.S.C. § 1446(b)(3).

Order Granting Plaintiff Mark R. Stubbs' Motion for Nonsuit the remaining parties – Defendant Werner Enterprise, Inc., domiciled in Nebraska; Defendant Gregory George Hittner, domiciled in Tennessee; and Intervenor September Lee Fuller, domiciled in Texas – are completely diverse for jurisdictional purposes.

16. Because the Intervenor and the Werner Defendants to this suit do not share citizenship in any state, removal is proper on diversity grounds.

17. Accordingly, because this notice of removal has been filed within thirty days after the entry of the Order Granting Plaintiff Mark R. Stubbs' Motion for Nonsuit, this removal is proper and timely under 28 U.S.C. §1446(b).

B. The Amount in Controversy Exceeds \$75,000.00.

18. Further, as set forth in The Original Plea in Intervention of September Lee Fuller, filed with these pleadings here today, the amount in controversy in this action exceeds, exclusive of interest and costs, the sum of Two Hundred Thousand and No/100 Dollars (\$200,000.00). Thus, the amount in controversy meets the threshold for removal.

19. The United States District Court for the Northern District of Texas, Dallas Division, embraces Dallas County, Texas, the place where the state court action was filed and is pending. This statement is not meant as a waiver of any argument that venue is improper in the location in which the state court action was filed, but merely demonstrates the propriety of removing the action to this federal judicial district.

20. The live pleadings before the state court are The Original Plea in Intervention of September Lee Fuller and Defendants Gregory George Hittner and Werner Enterprises, Inc.'s Original Answer. No other motions are pending before the state court.

21. All pleadings, process, orders, and other filings in the state court action are attached to this Notice, as required by 28 U.S.C. § 1446(a).

22. The Werner Defendants will promptly file a copy of this Notice with the clerk of the state court in which the action is pending.

III.
REQUEST FOR JURY TRIAL

23. The Werner Defendants hereby demand a trial by jury in accordance with the provisions of FED. R. CIV. P. 38.

WHEREFORE, PREMISES CONSIDERED, Defendants **WERNER ENTERPRISES, INC.** and **GREGORY GEORGE HITTNER**, as a parties in diversity with the Intervenor September Lee Fuller, respectfully request that this action be immediately and entirely removed upon filing of this Notice of Removal to the United States District Court for the Northern District of Texas, Dallas Division, and for such other and further relief to which it may show themselves to be justly entitled in equity or law.

Respectfully submitted,

FEE, SMITH, SHARP & VITULLO, L.L.P



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GREGORY GEORGE HITTNER, AND
NEBRASKA WERNER ENTERPRISES, INC.
d/b/a WERNER ENTERPRISES, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 21, 2016, the foregoing was filed with the Clerk of the Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of documents by electronic means.

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